

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3198 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI KANTIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR SJ DAVE, AGP for Respondent Nos.1, 2 and 3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/06/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 16-3-2000 passed by the District Magistrate, Surat in exercise of

powers under section 3(2) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene (S.K.A.O.) and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene (S.K.A.O.) essential to the community.

2. I have heard learned advocate for the petitioner, learned AGP for the State, Mr.S.J.Dave and learned Addl. Central Govt. Standing Counsel for the Central Govt., Ms.Davawala.

3. Learned advocate for the petitioner has mainly argued that there is a delay in passing the order of detention. He has submitted that on 18-11-1999 truck belonging to the petitioner was seized and nine samples were drawn and the same have been sent to the laboratory on 22-12-1999 for reports and report has been received on 22-12-1999 stating that the essential commodity carried in the said truck was containing petroleum solvent. According to the learned advocate for the petitioner, the authority has passed the order on 16-3-2000 and, therefore, there is a delay of about four months. He has relied upon a decision of the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Others reported in AIR 1994 SCC 656 wherein it has been held at head as under:

"Order on basis of some Criminal cases registered against detenu and also on basis of statements of witnesses--Passed after 5 months and 8 days from registration of last case and more than 4 months from submission of proposal--Statements of witnesses referred to in grounds of detention obtained after detenu was released on bail in all cases--Order set aside on ground of delay."

4. Looking to the averments made in the petition as well as the arguments advanced by the learned advocate for the petitioner, it is prima-facie established that the detention order has been based on the inquiry and seizure of the solvent on 18-11-1999 and nine samples from the stock were taken and same were sent for report. It appears that report of the expert has been received by the authority on 22-12-1999 and thereafter also, the authority has not decided about the same and after about four months, authority has passed the impugned order on 16-3-2000. There is a delay in passing the order of detention and said delay is fatal as per the Apex Court and hence, the order vitiates only on this ground.

Therefore, the same is illegal and the same cannot be sustained. Learned advocate for the petitioner has not pressed any other points.

5. In view of the aforesaid, the petition is allowed. The impugned order of detention dated 16-3-2000 passed against the detenu is hereby quashed and set aside. The detenu-Sureshbhai Kantibhai Patel is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA, J.)

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